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IN THE

Supreme Court of The United States

OCTOBER TERM, 1979

No. 79-245

FRANK T. BARR, et al.,

Plaintiffs,

vs.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

On Petition For Writ of Certiorari to the Court Of Appeal, State Of California

SUPPLEMENTAL STATEMENT AND BRIEF OF PETITIONERS

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SUPPLEMENTAL STATEMENT OF FACTS

On August 17, 1979, three days after the filing of the petition for certiorari herein, the respondents filed a request with the clerk of the trial court, seeking an entry of default against the United Methodist Church on the ground that the answer filed on behalf of the denomination, on July 2, 1979, was inadequate. (This answer is reproduced as Appendix F to the petition.) The clerk refused to enter the default. Thereafter, on August 28, 1979, respondents filed a motion with the trial court to strike the answer. In their briefing on this motion, the respondents explained their objection to the answer—that it attempted to preserve the defense of incapacity to be sued, and it was filed by the petitioners

herein on behalf of the denomination rather than simply by "UMC." Respondents stated:

> "The purported answer avoids an answer by UMC because an answer by UMC would moot the issue before the United States Supreme Court."

Reply Memorandum in Opposition [Sic] to Motion to Strike Answer to Consolidated Amended Complaint (September 13, 1979) at 3.[1]

At a hearing on September 14, 1979, the Honorable Judge James L. Focht, to whom this case was reassigned, deferred decision on respondent's motion to strike the answer, noting the great importance of the case and its pendency before this Court.

This new development is included herein and addressed in argument below, pursuant to Supreme Court Rule 24(5). Because respondents have elected not to file a brief in opposition to the petition for certiorari, standing instead on their brief in the related *Trigg* case (*Milhouse* v. *United States District Court,* No. 78-1855) now pending before this Court, petitioners will be filing no reply brief herein. Petitioners have requested the joint consideration of *Trigg* and the present case as is now suggested by respondents.

[1] Respondents also argued that the trial court was bound to reject the answer because the Court of Appeal decision here on review is "the law of this case," so that "[w]hether UMC exists is no longer open for dispute—factual or otherwise." *Id.*

ARGUMENT

On June 18, 1979 respondents filed with Mr. Justice Rehnquist an Opposition to Application for Stay and claimed, among other things, that no harm or disadvantage to the denomination would ensue from requiring it to file an answer in this cause. There they stated:

> "Petitioner's argument that it is threatened with irreparable harm if it must answer or otherwise plead, is tenuous at best. No California case holds that a defendant in California who, like UMC, objects to jurisdiction and unsuccessfully seeks all available appellate review of the decision denying its jurisdictional objection waives its jurisdictional objection by thereafter answering."
>
> (Opposition to Application for Stay, S. Ct. Miscellaneous No. A-1084 filed June 18, 1979 at 41. Italics and footnote omitted.)

However, respondents' latest representation on the subject addressed to the trial judge, the Honorable James L. Focht, that "an answer by UMC would moot the issue before the United States Supreme Court" demonstrates the practical finality of the proceedings below and shows the ripeness of the issues for consideration by this Court at this time. Respondents directly seek to impose upon the United Methodist denomination the dilemma of either expressly conceding capacity to be sued in an answer, or suffering a default of hundreds of millions of dollars. While the trial court rejected respondents' efforts to force this Hobson's choice on the denomination prior to this Court's decision on petition for writ of certiorari, the dilemma remains. Should this Court deny review, the denomination may well have to suffer default in order to preserve the question of capacity and the constitutional integrity of its polity.

Respondents have clearly announced their determination to force the choice.[2]

This Court's review of the capacity issue and the constitutional questions raised by this case is now critically necessary.

Respectfully submitted,

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Attorneys for those persons upon whom service of process was attempted on behalf of The United Methodist Church.

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[2] In addition to their judicial filings, respondents have written "litigation reports" to class members and potential class members, informing them that if the denomination answers in the ordinary fashion, it would admit its jural status and "thereby moot its challenge to being sued," and in the event the denomination failed to answer, "it would be very difficult to get the default withdrawn." Ex. "A" to Motion to Prevent Unauthorized Communications with Potential Class Members (September 11, 1979) at 1-3.